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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,580	04/18/2005	Josef Pfistershammer	P26625	9245
7055	7590	02/03/2006	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C.			ROGERS, KRISTIN D	
1950 ROLAND CLARKE PLACE			ART UNIT	
RESTON, VA 20191			PAPER NUMBER	
			3736	

DATE MAILED: 02/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/522,580

Applicant(s)

PFISTERSHAMMER, JOSEF

Examiner

Kristin D. Rogers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 April 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed July 30, 2003 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "identification means" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

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of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a) because they fail to show "the upper end 38 (page 8, lines 2 and 10-11)" as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and

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informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "24" has been used to designate both annular lip and locating lip. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Sheets" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d)(1). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

***Specification***

6. The disclosure is objected to because of the following informalities: The specification lacks clarity in defining the annular lip 24 versus the locating lip 24, page 7 lines 15-17.

Appropriate correction is required.

7. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Sampling Device Including Transponder for Electronic Tracking and Identification.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claim 40 is rejected under 35 U.S.C. 102(b) as being anticipated by Hendrikx (EP 1060662). Hendrikx shows a tamper-proof animal identification device, Figure 1, comprising a male portion 1 with a base 3 and upstanding member 2, female portion 9 with base portion above 8, upstanding member 2 with annular lip 14, female base portion with upstanding collar 16 and cap 15 with aperture space shown between 15 and 6 of Figure 4, whereby annular lip 14 is retained within collar 16 and cap 15 by resilient ring 13 (Figure 2).

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10. Claim 41 is rejected under 35 U.S.C. 102(b) as being anticipated by Hendrikx (EP 1060662). Hendrikx shows a sampling device and tagging system comprising a male portion 1 with a base 3 and upstanding member 2, female portion 9 with base portion above 8, cap 15, resilient ring 13 retained thereby, and a system allowing the addition of one or more transponders for electronic identification (column 4 paragraph 35) and sampling components 6,7, and 17 (Figures 2-4).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 23-27, 29-34 and 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrikx (EP 1060662) in view of Bucalo (5267572). In regard to claim 23, Hendrikx shows a sampling device characterized by a male portion 1 with a base 3, cylindrical sample removal means 6, female portion 9 with base portion above 8, sample container 17 and sample receiving space 7. Hendrikx lacks a sample preparative/preservative within the sample removal means sample receiving space. Bucalo teaches sampling instrument 20, comprising a cylindrical sample removal means 15 with preservative liquid 27 in sample receiving space 26 for the purpose of preparing and preserving the biological tissue specimen (Figure 7). In regard to claim 24,

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Hendrikx shows male 1 base portion 3 and upstanding member 2 with annular lip 14. In regard to claim 25, Hendrikx shows sample removal means 6 positively located on the upstanding member 2. In regard to claim 26, Hendrikx shows a cylindrical cutter with cutting edge 6, thrust member with cutting edge 5 received in bore of cutter 6 (Figure 1) and seat 4. In regard to claim 27, Hendrikx shows thrust member 5 that further defines the sample receiving chamber 7. In regard to claim 29, Hendrikx shows thrust member with cutting edge 5 engaged within the bore 6. In regard to claim 30, Hendrikx shows cutter means 6 is tapered from lower end to upper end. In regard to claim 31, Hendrikx shows the sample container 17 is tapered broader at an open lower end than it is at the upper end (Figure 2). In regard to claim 32, Hendrikx shows a female base portion 8 provided with a frangible portion 12 for receiving the male member. In regard to claim 33, Figures 2-4 of Hendrikx show the open lower end of the sample container 17 releasably retained with the upstanding collar 16 of female portion by cap 15; sample container is received through an aperture provided by cap 15; and sample container 17 and sample removal means 6 are detachable (column 2, paragraphs 10-11 and 14). In regard to claim 34, it is noted that the cylindrical cutter means 6 of Hendrikx is capable of obtaining a "ring of resilient material" captured within the upstanding collar 16 and cap 15 (Figure 4). In regard to claim 38 and 39, Hendrikx provides a sampling device wherein the male and female portions having matching identification, holographic images at snap-fit joint of the female and male base portions (column 2, paragraph 13 and column 4 paragraph 36). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Hendrikx with a sample



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preparative/preservative within the sample removal means sample receiving space as taught by Bucalo since such modification would maintain the integrity of a biological sample for future experimental analysis.

13. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrikx (EP 1060662) in view of Bucalo (5267572) as applied to claim 27 above and in further view of Molomut et al. (3224434). Hendrikx shows a sampling device including a sample receiving chamber 7 and Bucalo teaches a sampling instrument 20 including a preservative liquid 27, equivalent of a granular preservative, in sample receiving space 26 for the purpose of preparing and preserving the biological tissue specimen, as set forth above. Hendrikx and Bucalo lack a sheet of porous material. Molomut et al. teaches a sampling device with a porous mesh collecting means 20 between the receiving space between the male and female sample space for retaining. Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Hendrikx a preservative solution and porous sheet as taught by Bucalo and Molomut et al. for the purpose of providing a means for retaining the preservative in the sample receiving space.

14. Claims 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrikx in view of Bucalo as applied to claim 23 above, and further in view of Ritchey (6145225). Hendrikx shows a sampling device as set forth above. Hendrikx lacks a transponder. In regard to claim 35, Ritchey teaches an animal ear tag assembly that comprises a transponder (column 3, lines 37-40) for identification. In regard to claim 36, Ritchey teaches separate transponder 80 provided associated with the base members

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40 and 30 of female portion 12. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Hendrikx with a transponder as taught by Ritchey for the purpose of providing identification and tracking means.

15. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrikx in view of Bucalo and Ritchey as applied to claim 36 above, and further in view of Black (6239737). Hendrikx shows a sampling device including a female base portion 9 as set forth above. Hendrikx lacks a transponder sandwiched between female base members. Ritchey teaches an animal ear tag assembly transponder 80 provided associated with the base members 40 and 30 of female portion 12. Ritchey lacks a transponder with an aperture. Black teaches a tagging apparatus comprising a transducer with an aperture 2 (Figure 1) for the purpose of receiving a male member 1 into female member 3. It would have been obvious for one having ordinary skill in the art at the time of the invention to modify Hendrikx with a transponder having an aperture sandwiched by female base members as taught by Ritchey and Black for providing an uninterrupted receiving space for joining the male and female members.

16. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrikx in view of Bucalo (5267572). Hendrikx shows a sampling device and tagging system comprising sampling components 6,7, and 17, means and container respectively, releasably located on upstanding member 2, sample container 17 releasably located on female portion 9. Hendrikx lacks a sample preparative/preservative within the sample removal means sample receiving space. Bucalo teaches sampling instrument 20, comprising a cylindrical sample removal means 15 with preservative liquid 27 in sample

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receiving space 26 for the purpose of preparing and preserving the biological tissue specimen (Figure 7). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Hendrikx with a sample preparative/preservative within the sample removal means sample receiving space as taught by Bucalo since such modification would maintain the integrity of a biological sample for future experimental analysis.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristin D. Rogers whose telephone number is 571.272.7293. The examiner can normally be reached on Monday through Friday 8:00am - 4:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571.272.4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KDR

  
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